MOTION FILED
FEB 21 1984

Nos. 83-498 and 83-573

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

G. MICHAEL BROWN, ETC. *et al.*,
Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*,
Appellees.

MARTIN DANZIGER, ETC., *et al.*,
Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

---

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AS AMICUS CURIAE

DAVID PREVIANT
ROBERT M. BAPTISTE
Counsel of Record
STEVEN L. MURRAY
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
Area Code (202) 624-6945
Attorneys for the International Brotherhood of Teamsters, Amicus Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-498

G. MICHAEL BROWN, ETC. *et al.*,
Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*,
Appellees.

No. 83-573

MARTIN DANZIGER, ETC., *et al.*,
Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

---

MOTION BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The International Brotherhood of Teamsters (IBT) hereby moves for leave to file a brief as *amicus curiae* arguing that the decision of the United States Court of Appeals for the Third Circuit was correctly decided.

INTEREST OF THE IBT AND ISSUES TO BE COVERED IN ITS BRIEF AMICUS CURIAE

The IBT is an international union comprised of 715 affiliated local unions. The collective membership of the IBT's affiliates totals approximately 1.8 million working men and women.

The IBT represents workers in a wide variety of industries in all 50 states of this nation. This case involves the established federal labor law preemption doctrine. The conflict between the type of state and federal legislation at issue has already and will continue to have a severe impact on present and potential Teamster members. The IBT is vitally interested in preserving the federal right of employees to form and join labor organizations and freely select the collective bargaining representatives of their choice.

The IBT has a strong and legitimate interest in the consistent application of the principles of the labor law preemption doctrine. The IBT is concerned that if the states are permitted to regulate conduct which is clearly protected by the National Labor Relations Act (NLRA), 29 U.S.C. § 151, *et seq.*, a substantial and harmful conflict between state and federal regulatory schemes will result.

We stress that the federal labor law preemption doctrine is clearly established. The preemption standards provide that where the conduct sought to be regulated is actually or arguably protected by § 7 of the NLRA the conduct is preempted from state regulation. State legislation which establishes disqualification criteria for a labor organization's officials and agents regulates the employees' § 7 right to select the bargaining representatives of their choice. This form of state legislation limits the employees' choice of a representative because the state's judgment is substituted for that of the affected employees. In short, state legislation should not regulate, nor

condition the exercise of, activities which are protected by § 7 of the NLRA. The national labor policy requires that such conduct remain a subject of exclusive federal concern.

In our view, the court of appeals' decision in this case supports the national labor policy. This policy is served because the lower court's holding provides for the uniform administration and application of the federal labor laws and the rights provided therein. The function of the accompanying brief *amicus curiae* is to provide a succinct statement of our position in order to aid this Court in its consideration of these issues of critical importance to workers' rights.

CONCLUSION

For the above stated reasons, this motion for leave to file an *amicus curiae* should be granted.

Respectfully submitted,

DAVID PREVIANT
ROBERT M. BAPTISTE
Counsel of Record
STEVEN L. MURRAY
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
Area Code (202) 624-6945

TABLE OF CONTENTS

	Page
MOTION BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE..	i
INTEREST OF THE IBT AND ISSUES TO BE COVERED IN THE BRIEF AMICUS CURIAE	ii
TABLE OF AUTHORITIES	vii
BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS AS AMICUS CURIAE....	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	6
I. CONDUCT WHICH IS PROTECTED BY § 7 OF THE NATIONAL LABOR RELATIONS ACT IS A MATTER OF EXCLUSIVE FEDERAL CONCERN AND PREEMPTED FROM STATE REGULATION	6
A. The Established Federal Labor Law Preemption Doctrine	6
B. Supreme Court Decisional Law Requires The Preemption of State Regulation of Conduct Protected by § 7 of The NLRA	12
1. *Hill* v. *Florida* Is Directly On Point	12
2. Congress Did Not Alter the Principles Established by *Hill* In Enacting The LMRA and LMRDA	14
3. *DeVeau* v. *Braisted* Did Not Overrule or Dilute *Hill* v. *Florida*	16

TABLE OF CONTENTS—Continued

Page

II. THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) PREEMPTS ALL STATE LEGISLATION RELATING TO EMPLOYEE BENEFIT PLANS 19

III. THE IMPOSITION OF ADDITIONAL PENALTIES FOR THE COMMISSION OF CRIMES ALREADY PROHBITED BY EXISTING FEDERAL AND STATE LEGISLATION IS UNNECESSARY 21

A. Federal Labor Legislation 21

B. Federal Criminal Legislation 23

C. State Legislation 25

D. Conclusion 25

CONCLUSION 26

TABLE OF AUTHORITIES

CASES: Page

Alessi v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981) 4, 19, 20
Amalgamated Association of Street, Electric Railway and Motor Coach Employees v. *Lockridge*, 403 U.S. 274 (1971) 4, 9, 18, 19
Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. *Wisconsin Employment Relations Board*, 340 U.S. 383 (1951) 9, 10, 26
Bianchi v. *United States*, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955) 23
DeVeau v. *Braisted*, 363 U.S. 144 (1960) 4, 16, 17, 18
El Dorado, Inc., 151 N.L.R.B. 579 (1965) 11
Guss v. *Utah Labor Relations Board*, 353 U.S. 1 (1957) 25, 26
Hill v. *Florida ex rel. Watson*, 325 U.S. 538 (1945) ..... *passim*
Hotel and Restaurant Employees and Bartenders International Union Local 54 v. *Danziger, etc. et al.*, 709 F.2d 815 (3d Cir.), *prob. juris. noted*, 52 U.S.L.W. 3413 (U.S., Nov. 28, 1983) (Nos. 83-498 and 83-573) 2, 6, 11, 14
International Union, UAW v. *O'Brien*, 339 U.S. 454 (1950) 9, 10
International Union, UAW v. *Wisconsin Employment Relations Board*, 336 U.S. 245 (1949) 10
Local 926, International Union of Operating Employees v. *Jones*, 75 L.Ed.2d 368 (1983) 8, 9
Malone v. *White Motor Corp.*, 435 U.S. 497 (1978) 20
Mapes Hotel, Inc., 230 N.L.R.B. 61 (1977) 11
San Diego Building Trades Council v. *Garmon*, 359 U.S. 236 (1959) 8, 9, 18, 19
The Anthony Co., 220 N.L.R.B. 886 (1975), *enforced*, 557 F.2d 692 (9th Cir. 1977) 11
United States v. *Enmons*, 410 U.S. 396 (1973) 23, 24
United States v. *Green*, 350 U.S. 415 (1956) 24
United States v. *Iozzi*, 420 F.2d 512 (4th Cir. 1970), *cert. denied*, 402 U.S. 943 (1971) 23
United States v. *Kaye*, 556 F.2d 855 (5th Cir.), *cert. denied*, 434 U.S. 921 (1977) 25

TABLE OF AUTHORITIES—Continued

Page

United States v. *Kemble*, 198 F.2d 889 (3d Cir.), *cert. denied*, 344 U.S. 893 (1952) 24
United States v. *Kramer*, 355 F.2d 891 (7th Cir.), *cert. granted in part and denied in part*, 384 U.S. 100 (1966) 23
United States v. *Local 560, etc. et al.*, 550 F. Supp. 511 (D.N.J. 1982) 21, 24, 25
United States v. *Provenzano*, 620 F.2d 985 (3d Cir.), *cert. denied*, 449 U.S. 899 (1980) 25
United States v. *Scotto*, 641 F.2d 47 (2d Cir. 1980), *cert. denied*, 452 U.S. 961 (1981) 25
United States v. *Thordarson*, 646 F.2d 1323 (9th Cir.), *cert. denied*, 454 U.S. 1055 (1981) 25
United Steelworkers of America v. *Sadlowski*, 457 U.S. 102 (1982) 14, 15

STATUTES AND CONSTITUTIONAL PROVISIONS:

Employee Retirement Income Security Act:
29 U.S.C. § 1001, *et seq.* 4, 19
Section 411(a), 29 U.S.C. § 1111(a) 5, 22, 23
Section 411(b), 29 U.S.C. § 1111(b) 23
Section 514, 29 U.S.C. § 1144 ..... 4, 19, 20
Section 514(a), 29 U.S.C. § 1144(a) 4, 19, 20
Section 514(c)(2), 29 U.S.C. 1144(c)(2) 20

Hobbs Act:
18 U.S.C. § 1951, *et seq.* 5, 23
18 U.S.C. § 1951(b)(2) 23

Labor-Management Relations Act of 1947:
29 U.S.C. § 151, *et seq.* 3
Section 7, 29 U.S.C. § 157 14
Section 302, 29 U.S.C. § 186 ..... 4, 5, 21, 23

Labor-Management Reporting and Disclosure Act of 1959:
29 U.S.C. § 401, *et seq.* 3
Section 101, 29 U.S.C. § 411 21
Sections 201-211, 29 U.S.C. §§ 431-441 21

TABLE OF AUTHORITIES—Continued

	Page
Sections 301-306, 29 U.S.C. §§ 461-466	21
Sections 401-403, 29 U.S.C. §§ 481-483	21
Sections 501-504, 29 U.S.C. §§ 501-504	21
Section 501(c), 29 U.S.C. § 501(c)	22
Section 502, 29 U.S.C. § 502	22
Section 503(a), 29 U.S.C. § 503(a)	22
Section 503(b), 29 U.S.C. § 503(b)	22
Section 504, 29 U.S.C. 504	*passim*
Section 504(a), 29 U.S.C. § 504(a)	15, 22
Section 504(b), 29 U.S.C. § 504(b)	22
Section 602, 29 U.S.C. § 522	22
Section 603(b), 29 U.S.C. § 523(b)	15
Section 604, 29 U.S.C. § 524	15, 25
National Labor Relations Act of 1935:	
29 U.S.C. § 151, *et seq.*	2
Section 1, 29 U.S.C. § 151	6
Section 7, 29 U.S.C. § 157	*passim*
New Jersey Casino Control Act:	
N.J. Stat. Ann. 5:12-1, *et seq.* (West Supp. 1983-1984)	7
Section 86, N.J. Stat. Ann. 5:12-86 (West Supp. 1983-1984)	2, 7, 11, 20
Section 89, N.J. Stat. Ann. 5:12-89 (West Supp. 1983-1984)	7
Section 90, N.J. Stat. Ann. 5:12-90 (West Supp. 1983-1984)	7
Section 91, N.J. Stat. Ann. 5:12-91 (West Supp. 1983-1984)	7
Section 93, N.J. Stat. Ann. 5:12-93 (West Supp. 1983-1984)	*passim*
Section 93(a), N.J. Stat. Ann. 5:12-93(a) (West Supp. 1983-1984)	7
Section 93(b), N.J. Stat. Ann. 5:12-93(b) (West Supp. 1983-1984)	4, 7, 20
Section 107(c), N.J. Stat. Ann. 5:12-107(c) (West Supp. 1983-1984)	8
Section 117, N.J. Stat. Ann. 5:12-117 (West Supp. 1983-1984)	7

TABLE OF AUTHORITIES—Continued

Page

Racketeer Influenced and Corrupt Organizations Act:
18 U.S.C. § 1961, *et seq.* 5, 23
18 U.S.C. § 1962(a) 24
18 U.S.C. § 1962(b) 24
18 U.S.C. § 1962(c) 24
18 U.S.C. § 1962(d) 24
United States Constitution:
Art. I, § 10 16
Art. VI, cl. 2 ..... 2, 6, 26

MISCELLANEOUS:

S. Rep. No. 91-617, 91st Cong., 1st Sess. 78 (1968).. 24
S. Rep. No. 1684, 85th Cong., 2d Sess. 4-5 (1958).. 14
S. Rep. No. 187, 86th Cong., 1st Sess., *reprinted in* 1959 U.S. Code Cong. & Ad. News 2318 ..... 15, 16
Cox, Internal Affairs of Labor Unions Under The Labor Reform Act of 1959, 58 Mich. L. Rev. 819 (1960) 22
Project, White Collar Crime: Second Annual Survey of Law, 19 Am. Crim. L. Rev. 173 (1981).... 24, 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-498

G. MICHAEL BROWN, ETC. *et al.*,
Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*,
Appellees.

No. 83-573

MARTIN DANZIGER, ETC., *et al.*,
Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

---

BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AS AMICUS CURIAE

This brief *amicus curiae* is filed by the International Brotherhood of Teamsters (IBT) contingent on the granting of the foregoing motion for leave to file a brief as *amicus curiae.*

INTRODUCTION AND SUMMARY OF ARGUMENT

In the present case, the Third Circuit Court of Appeals held that the right of employees to select their collective bargaining representatives is expressly protected by § 7 of the National Labor Relations Act (NLRA), 29 U.S.C. § 151, *et seq. Hotel and Restaurant Employees and Bartenders International Union Local 54* v. *Danziger, etc. et al.* 709 F.2d 815 (3rd Cir.), *prob. juris. noted*, 52 U.S.L.W. 3413 (U.S., Nov. 28, 1983) (Nos. 83-498 and 83-573) [hereinafter cited as *Local 54*]. Section 93 of the New Jersey Casino Control Act, N.J. Stat. Ann. 5:12-93 (West Supp. 1983-1984), substantially and directly limits the employees' exercise of this right. It prohibits labor organizations from collecting dues from employees covered by the Act and administering employee benefit funds, if any officer, agent, or principal employee of the union is disqualified under the criteria in § 86. N.J. Stat. Ann. 5:12-86 (West Supp. 1983-1984). Under established preemption principles, state regulation of conduct protected by § 7 of the NLRA is preempted from state regulation. Consequently, the Third Circuit Court of Appeals was correct in holding that § 93 of the Casino Control Act is preempted by the NLRA, and is therefore unconstitutional under the supremacy clause of the United States Constitution. U.S. Const. Art. VI, cl.2.

1. Section 93 of the state law directly regulates the rights of employees under § 7 of the NLRA. Section 93 requires labor organizations to register with the Casino Control Commission, as a condition for serving as the collective bargaining representative of employees covered by the statute. This provision prohibits a labor organization from collecting dues, either for failing to register with the Commission, or for being disqualified under § 86 as incorporated by § 93. This statute prohibits the union and its designated representatives from functioning as the collective bargaining representative for casino hotel employees, except upon conditions fixed by the state. Ac-

cordingly, enforcement of § 93 of the Casino Control Act can result a forfeiture of recognized collective bargaining rights. *See Hill* v. *Florida, ex rel. Watson*, 325 U.S. 538 (1945). Therefore, this state regulation violates the employees' § 7 right to freely select their bargaining representative.

This Court's decisions require the preemption of state regulation of conduct protected by section 7 of the NLRA. In *Hill*, this Court addressed the specific issue presented in this case: whether the NLRA preempts a state from establishing disqualification criteria for bargaining representatives. 325 U.S. at 539. The Court analyzed the legality of a state statutory scheme similar to the Casino Control Act. It determined that the disqualification criteria of the Florida statute at issue "circumscribe[d] the 'full freedom' of choice which Congress said employees should possess." *Hill*, 325 U.S. at 541. Accordingly, *Hill* held that the state law was preempted by the NLRA. Its precedential force has not been modified by subsequent federal legislation or decisions of this Court.

In the Labor-Management Relations Act of 1947 (LMRA) 29 U.S.C. § 151, *et seq.*, Congress did not address the issue of disqualifying criteria for bargaining representatives. The LMRA preserved the rights of employees to freely select their bargaining representatives, the interests held federally protected and preempted from state regulation in *Hill*. Accordingly, the LMRA did not alter federal law regarding the eligibility to serve as a collective bargaining representative.

The Labor Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 401, *et seq.*, specifically addressed the issue of disqualification criteria for union officials. Section 504 establishes a list of disqualifying offenses barring service as a union officer, business agent or union employee. 29 U.S.C. § 504. The LMRDA preserved and complemented the authority of *Hill* v. *Florida's*

construction of § 7 of the NLRA and the federal preemption doctrine.

The case of *DeVeau* v. *Braisted*, 363 U.S. 144 (1960), does not support the validity of state legislation establishing disqualification criteria for union officials. Although *DeVeau* upheld a state statute which regulated the employees' § 7 right to select a bargaining representative, *DeVeau* was a narrow decision which did not overrule *Hill*. In *DeVeau*, this Court clearly distinguished its decision from *Hill* on the basis that the state program in *DeVeau* had been expressly considered and approved by Congress as an interstate compact. As shown by later decisions of this Court, state legislation that regulates conduct protected by the NLRA is preempted, notwithstanding the assertion that the state law is a comprehensive general criminal statute not directed at labor-management relations. *Amalgamated Association of Street, Electric Railway and Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 292 (1971).

2. The Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, *et seq.*, established a comprehensive legislative scheme for regulating employee benefit plans. The Act specifically provides that pension plan regulation is a matter of exclusive federal concern. *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981). Section 514(a) of ERISA provides that the Act "shall supercede any and all State laws insofar as they . . . relate to any employee benefit plan." 29 U.S.C. § 1144(a). Section 93(b) of the Casino Control Act purports to regulate the administration of employee benefit plans. Therefore, this provision is preempted by § 514 of ERISA.

3. The imposition of additional penalties for the commission of crimes already prohibited by existing federal and state legislation is unnecessary. Congress has provided the federal government with the statutory authority to attack labor racketeering through labor and criminal legislation. Section 302 of the LMRA addresses the issue

of labor-management corruption. 29 U.S.C. § 186. Moreover, the LMRDA is a comprehensive scheme designed to protect membership rights in labor organizations. Section 504 of the LMRDA provides disqualification criteria for responsible union positions and criminal penalties for violation of the section. 29 U.S.C. § 504. Finally, § 411(a) of ERISA provides protection against corruption in the administration of employee benefit plans by establishing disqualifying criteria for officers and employees of employee benefit plans. 29 U.S.C. § 1111(a).

In addition to the federal labor laws, the federal government has applied the Hobbs Act, 18 U.S.C. § 1951, *et seq.*, and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.*, to root out corruption in the context of labor related activities.

The states may prosecute racketeering abuses under their general criminal laws. The states cannot, however, infringe on the right of employees to select the bargaining representatives of their choice. This right is protected by § 7 of the NLRA and is a matter of exclusive federal concern. Accordingly, this interest can only be modified or regulated through congressional action. The labor law preemption doctrine requires that any state regulation of this conduct be struck down as unconstitutional.

ARGUMENT

I. CONDUCT WHICH IS PROTECTED BY § 7 OF THE NATIONAL LABOR RELATIONS ACT IS A MATTER OF EXCLUSIVE FEDERAL CONCERN AND PREEMPTED FROM STATE REGULATION

A. The Established Federal Labor Law Preemption Doctrine

In the present case, the Third Circuit Court of Appeals was correct in holding that the right of employees to select their collective bargaining representatives is expressly protected by § 7 of the NLRA. Section 93 of the New Jersey Casino Control Act, N.J. Stat. Ann. 5:12-93 (West Supp. 1983-1984), substantially and directly limits the employees' exercise of this right. Established federal labor law preemption principles provide that state regulation of conduct protected by § 7 of the NLRA is preempted. Therefore, § 93 is unconstitutional under the supremacy clause of the United States Constitution. U.S. CONST. art. VI, cl.2.

The NLRA regulates and promotes the federal rights of employees to join labor organizations and select their bargaining representatives. Section 1 of the NLRA sets forth Congress' purpose to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purposes of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 U.S.C. § 151. Section 7 of the NLRA provides employees with the "right to self-organization, to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." 29 U.S.C. § 157. Employee self-organization and free choice are recognized federal statutory rights. *Local 54, supra*, 709 F.2d at 824.

The New Jersey Casino Control Act, N.J. Stat. Ann 5:12-1, *et seq.* (West Supp. 1983-1984), requires the licensing of casinos and casino employees. N.J. Stat. Ann. 5:12-89-90 (West Supp. 1983-1984). Moreover, the statute requires the registration of all casino hotel employees. N.J. Stat. Ann 5:12-91 (West Supp. 1983-1984). The labor provisions at issue are set forth in § 93 of the Act. Section 93(a) requires every labor organization seeking to represent employees who are registered or licensed under the Act and employed at a casino hotel to register with the Commission annually. N.J. Stat. Ann. 5:12-93(a) (West Supp. 1983-1984). Moreover, § 93(b) includes a disqualification provision which provides:

> No labor organization, union or affiliate registered or required to be registered pursuant to this section and representing or seeking to represent employees licensed or registered under this act may receive any dues from any employee licensed or registered under this act and employed by a casino licensee or its agent, or administer any pension or welfare funds, if any officer, agent or principal employee of the labor organization, union or affiliate is disqualified in accordance with the criteria contained in section 86 of this act. The commission may for the purposes of this subsection waive any disqualification criterion consistent with the public policy of this act and upon a finding that the interests of justice so require. [N.J. Stat. Ann. 5:12-93(b) (West Supp. 1983-1984).]

The Casino Control Act contains a comprehensive enforcement scheme. A labor organization's failure to register constitutes a violation under § 86 and subjects the union to the penalties set forth in § 93(b). Morover, if the union or its agents, officers, or principal employees attempt to operate in a representative function without meeting the registration requirements of § 93(a), they are subject to the criminal penalties set forth in § 117 of the Act. N.J. Stat. Ann. 5:12-117 (West 1983-1984).

The disclosure requirements of § 93(a) may be enforced by the Commission with an order requiring appropriate disclosure. N.J. Stat. Ann. 5:12-107(c). (West Supp. 1983-1984). In addition, the Commission has contempt powers to enforce such orders. N.J. Stat. Ann. 5:12-107(c) (West Supp. 1983-1984).

This Court has repeatedly addressed the issue of whether a particular state regulation may coexist with the comprehensive amalgam of substantive law and regulatory arrangements that Congress established in the National Labor Relations Act (NLRA), to govern labor management relations affecting interstate commerce. *Local 926, International Union of Operating Engineers* v. *Jones*, 75 L.Ed.2d 368 (1983). In *Local 926*, the Court's most recent preemption decision, the majority explained that the governing preemption doctrine was clearly established. Justice White speaking for the Court said:

> Our approach to the preemption issue has thus been stated and restated. First, we determine whether the conduct that the state seeks to regulate or to make the basis of liability is actually or arguably protected or prohibited by the NLRA. Although the [*San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959)] guidelines [are not to be applied] in a literal, mechanical fashion, if the conduct at issue is arguably prohibited or protected otherwise applicable state law and procedures are ordinarily preempted. When, however, the conduct at issue is only a peripheral concern of the Act or touches on interests so deeply rooted in local feeling and responsibility that, *in the absence of compelling congressional direction*, it could not be inferred that Congress intended to deprive the state of the power to act, we refuse to invalidate state regulation or sanction of the conduct. [75 L.Ed.2d at 376-377 (emphasis added and citations omitted).]

This test reflects the critical inquiry in the preemption analysis, that is, whether the activities sought to be regu-

lated are actually or arguably protected by the NLRA, and thus within the central aim of Congress in enacting § 7 of the Act, or whether they are only of peripheral concern to the exercise of those rights Congress sought to protect. When the conduct at issue is specifically protected by § 7, there is no justification for engaging in any analysis involving the balancing or weighing of interests. A balancing test is only proper when there is an "absence of compelling congressional direction" regarding the federal concern over the conduct at issue. *Local 926*, 75 L.Ed.2d at 376, *citing Garmon*, 359 U.S. at 244. This is because the federal labor law "preemption doctrine finds its basic justification in the presumed intent of Congress." *Amalgamated Association of Street, Electric Railway and Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 302 (1971).

Where, as here, Congress has acted through § 7 to protect specific activities in a clear and unequivocal manner, such conduct is preempted from state regulation. This position was articulated by this Court in *Garmon*, in which the majority stated:

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state laws. [350 U.S. at 244.]

The broad *Garmon* preemption doctrine was designed to prevent conflict between state and federal regulatory schemes in the field of labor law. *Lockridge*, *supra*, 403 U.S. at 294-95.

The cases of *International Union, UAW* v. *O'Brien*, 339 U.S. 454 (1950), and *Amalgamated Association of*

Street, Electric Railway and Motor Coach Employees of America v. *Wisconsin Employment Relations Board*, 340 U.S. 383 (1951), demonstrate the Court's consistent application of the preemption doctrine in cases involving conduct protected under § 7 of the NLRA. In *O'Brien*, the Court found that § 7 safeguarded the right of employees to engage in concerted activities and "expressly recognized the right to strike," 339 U.S. at 457. Accordingly, the Court held that the strike vote provisions of the Michigan labor mediation law were preempted by § 7. The Court stated the controlling principle of its decision: "if 'Congress has protected the union conduct which the State has forbidden . . . the state legislation must yield." 339 U.S. at 459, *citing International Union, UAW*, v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 252 (1949).

The Court's analysis in *O'Brien* was followed in *Amalgamated*, where one issue presented here—whether a compelling state interest may permit state regulation of conduct protected by § 7—was directly addressed. There, the Court rejected the state's argument that uninterrupted essential public utility services, specifically, gas, electric, and transit services, constituted a crucial local concern which justified the state's regulation of the federal right to strike. 340 U.S. at 387, 397. The Court determined that the Wisconsin Public Utility Anti-Strike Law attempted to deny entirely the federal right to strike which Congress restricted to a very limited extent in case of national emergencies. 340 U.S. at 394. Therefore, the Court held that the NLRA and the LMRA preempted the state legislation purportedly dealing with state emergencies. 340 U.S. at 394.

In the present case, the state's interest in barring persons from serving as bargaining representatives is clearly less vital to the public's welfare than the state's interest in *Amalgamated*. *A fortiori*, the state's interest in the present case does not justify any analysis involv-

ing a balancing of competing interests, nor any regulation of § 7 rights by the Casino Control Act.

Section 93 of the Casino Control Act directly regulates, restricts, and violates the federal rights of employees under § 7 of the NLRA. Section 93 prohibits a labor organization from collecting dues, as the duly selected and certified bargaining representative,[1] for failing to register with the Commission or being debarred by § 86 as incorporated by § 93. These provisions violate the right of employees to freely select and maintain a bargaining representative. The purpose of the NLRA is to promote collective bargaining and "to protect the 'full freedom' of workers in the selection of bargaining representatives of their choice." *Hill* v. *Florida*, 325 U.S. 538, 541 (1945). Section 93 limits the employees' choice by requiring the labor organization's officers, agents, and principal employees to prove to the satisfaction of New Jersey that they measure up to the state standards of who may receive union dues from employees in the casino industry and function as a collective bargaining agent. This state law operates to effectively prohibit the union and its designated representatives from functioning as the collective bargaining representative in accordance with its duty under federal law, except upon conditions fixed by New Jersey. Accordingly, the state Commission has the power to render a duly selected and certified union ineffective as a bargaining agent.

---

[1] The NLRB has consistently exercised jurisdiction over the casino industry. *Local 54, supra*, 709 F.2d at 825, *citing El Dorado, Inc.*, 151 N.L.R.B. 579 (1965). Moreover, the Board has asserted jurisdiction notwithstanding the assertion that it should not due to the extensive state regulation of legalized gambling, the states' concern with preventing criminal infiltration, and the argument that gambling is essentially local in character. *El Dorado, Inc.*, 151 N.L.R.B. 579 (1965). *See also, Mapes Hotel, Inc.*, 230 N.L.R.B. 61 (1977); *The Anthony Co.*, 220 N.L.R.B. 886 (1975), *enforced*, 557 F.2d 692 (9th Cir. 1977).

These provisions place the union in an untenable position which Congress could not have permitted. The union may retain the officials subject to disqualification and thereby be prohibited from receiving any dues from employees covered by the Act. This will render the union totally ineffective as a collective bargaining agent in the casino and hotel industries, and sharply diminish the union's ability to function in that capacity in other industries. In the alternative, the duly selected and certified union could continue to serve as the employees bargaining agent and receive their dues, but only if the union dismissed the officers subject to the disqualification provision. This would mean dismissal of officials chosen by the membership, even though they are eligible to serve as a matter of federal law. 29 U.S.C. § 504.

The New Jersey statute plainly limits the employees' full freedom of choice in selecting a bargaining agent since it permits the State of New Jersey to substitute its judgment for that of the affected employees. Accordingly, § 93 of the New Jersey statute affects the status of the employees' designated bargaining agent and causes a forfeiture of recognized collective bargaining rights. *See Hill*, 352 U.S. at 537. Plainly, this state law violates the right of employees under § 7 right to select the bargaining representatives of their choice.

B. Supreme Court Decisional Law Requires The Preemption Of State Regulation Of Conduct Protected By § 7 Of The NLRA

1. Hill v. Florida *Is Directly On Point*

The Third Circuit Court of Appeals' decision finds much support in *Hill* v. *Florida*, 325 U.S. 538, where this Court addressed the specific issue presented in this case, that is, whether the NLRA preempts a state statute establishing the disqualification criteria for bargaining representatives. *Hill* established that such legislation is preempted by the NLRA. The state statutory scheme in

Hill was very similar to the New Jersey statute at issue in the present case. Section 4 of the Florida statute provided that no one could be licensed as a union business agent who was not a citizen of the United States for more than 10 years, who had been convicted of a felony, or who was not a person of good moral character. Section 6 of the law required every labor union operating in the state to file a written report with the Secretary of State, disclosing its name, location, and names and addresses of its officers. Section 14 of the Act provided criminal penalties against persons and unions for violating the statute. 325 U.S. at 540.

The Court's majority concluded that the Florida law prohibited the union and its selected representatives from functioning as collective bargaining agents, except upon conditions established by the state. The Court stated that the disqualification criteria of § 4 "circumscribe[d] the 'full freedom' of choice which Congress said employees should possess." *Hill*, 325 U.S. at 541. Moreover, the Court held that the provision interfered with the collective bargaining process. Under § 4, if a properly selected union agent failed to obtain a license, the agent could be enjoined and subjected to contempt and criminal penalties for doing that which the NLRA required. *Id.* at 542. The Court concluded that § 4 was "an obstacle to the full accomplishment and execution of the full purposes and objectives of Congress." *Id.*

The Court also held that § 6 was similarly preempted. It explained that if a labor organization failed to register properly, it could be enjoined from functioning as a labor union. The injunction would subject the labor organization to criminal punishment if it attempted to bargain on behalf of its members. *Id.* at 543. The Court determined that these sanctions created a barrier to collective bargaining which was inconsistent with the federally protected process of collective bargaining, stating the state and federal statutes could not "move freely

within the orbit of their respective purposes without infringing upon on another." *Id.* This Court's analysis and conclusion in *Hill* control the present case. The *Hill* decision has not been altered by subsequent legislation or rulings of this Court.

2. *Congress Did Not Alter the Principles Established by* Hill *In Enacting the LMRA and LMRDA*

In enacting the LMRA in 1947, Congress preserved the NLRA federal rights of employees to form unions and freely select their collective bargaining representatives. Section 7 was amended only by providing employees the "right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as recognized in section 8(a)(3)." Labor Management Relations Act of 1947, 29 U.S.C. § 157. The LMRA did not address the issue of disqualifying criteria for collective bargaining representatives. The Act preserved the interests which were held federally protected and preempted from state regulation in *Hill*—the right of employees to freely select their bargaining representatives. Accordingly, the LMRA did not alter federal law regarding the eligibility of unions to serve as collective bargaining representatives. *Local 54*, 709 F.2d at 826.

The 1959 LMRDA was designed to provide minimum standards for administering labor unions, while assuring only limited government intrusion into union affairs and preserving the subject as an exclusive federal concern. *See United Steelworkers of America* v. *Sadlowski*, 457 U.S. 102, 117 (1982). That objective was articulated in *Sadlowski*, in which this Court stated:

> Congress was guided by the general principle that unions should be left free to operate their own affairs, as far as possible. S. Rep. No. 1684, 85th Cong., 2d Sess., 4-5 (1958). It believed that only

> essential standards should be imposed by legislation, and that in establishing those standards, great care should be taken not to undermine union self-government. Given certain minimum standards, individual members are fully competent to regulate union affairs. [457 U.S. at 117.]

In the LMRDA, Congress established specific disqualification criteria for union officials. Section 504(a) of the LMRDA provides a list of disqualifying offenses for serving as a union officer, business agent, or union employee. 29 U.S.C. § 504(a). The LMRDA preserved and complemented the authority of *Hill's* construction of § 7 of the NLRA and the federal preemption doctrine.

The LMRDA reflects a delicate balance between the employees' rights under § 7 of the NLRA, the states' authority to regulate criminal conduct in the field of labor relations, and the federal preemption doctrine articulated in *Hill* v. *Florida*. Section 603(b) of the LMRDA provides that nothing in the first six titles of the Act shall be construed "to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended." 29 U.S.C. § 523(b). The Act recognizes the states' authority to regulate criminal conduct in Section 604 which provides:

> Nothing in this Act shall be construed to impair or diminish the authority of any State to enact and enforce general criminal laws with respect to robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or assault which inflicts grievous bodily injury, or conspiracy to commit any of such crimes. [29 U.S.C. § 524.]

Finally, the legislative history of § 504 indicates that Congress made clear its intent to preempt the field of regulating the standards for disqualification of union officials in limited circumstances. Senate Report No. 187 states:

> The provision in the bill [§ 305(a), the predecessor to § 504] is not conceived by the committee as additional punishment for the crimes mentioned in the section. The punishment of these kinds of crimes and the enactment of laws relating to them are and should be the province of the States. *This provision is designed to protect union members' and the public interest by establishing certain standards for persons holding union office—a matter within the purview of the Federal Government.* [S. Rep. No. 187, 86th Cong., 1st Sess., *reprinted in* 1959 U.S. Code Cong & Ad. News 2318, 2366 (emphasis added).]

3. DeVeau v. Braisted *Did Not Overrule or Dilute* Hill v. Florida

Petitioners' contention that *DeVeau v. Braisted*, 363 U.S. 144 (1960), supports the validity of state legislation establishing disqualification criteria for union officials results from a misreading of that case. *DeVeau* was a narrow decision which is wholly consistent with *Hill* v. *Florida*. In *DeVeau*, this Court clearly distinguished its decision from *Hill* on the basis that the state program in *DeVeau* had been expressly considered and approved by Congress as an interstate compact.

DeVeau involved the validity of § 8 of the New York Waterfront Commission Act of 1953. Section 8 set forth disqualification criteria for union officials in labor organizations covered by the Act. 363 U.S. at 145. The Act was the result of legislation by New York and New Jersey and a constitutional compact between the two states. The Act was submitted to Congress for approval under the requirement of Art I, § 10 of the U.S. Constitution. Congressional consent was "not perfunctory." 363 U.S. at 149. Congress independently investigated the problem which gave rise to the state legislation and hearings were conducted in the House and Senate. *Id.* Section 8 of the Act was enacted pursuant to explicit congressional authority to enact supplementary legislation in accord with the objective of the compact. In ap-

proving the compact, Congress provided: "the consent of Congress is hereby given to the compact set forth . . . and to the carrying out and effectuation of said compact, and enactments in furtherance thereof." 363 U.S. at 151.

In a plurality opinion by Justice Frankfurter, the Court held that § 8 of the Waterfront Act was not preempted by the NLRA. The Court did not overrule *Hill* v. *Florida*. In upholding the state legislation, the plurality repeatedly relied on the fact that Congress had carefully considered and expressly approved the state program. First, in attempting to ascertain Congress' likely reaction to § 8 of the state legislation, the Court stated: "[h]ere the States presented their legislative program to cope with an urgent local program to the Congress, and the Congress unambiguously supported what is at the core of this reform." 363 U.S. at 153. Secondly, the Court referred to Congress' rare and explicit authorization to enact supplemental legislation to the compact. Justice Frankfurter wrote:

> [I]t is of great significance that in approving the compact Congress did not merely remain silent regarding supplementary legislation by the States. Congress expressly gave its consent to such implementing legislation not formally part of the compact. *This provision of the consent by Congress to a compact is so extraordinary as to be unique in the history of compacts.* Of all the instances of congressional approval of state compacts—the process began in 1791, Act of Feb. 4, 1791, 1 Stat 189, with more than one hundred compacts approved since—we have found no other in which Congress expressly gave its consent to implementing legislation. [363 U.S. at 154 (emphasis added).]

Finally, the plurality opinion articulated the critical and controlling distinction between *DeVeau* and *Hill*. The plurality explained:

> [I]t would offend reason to attribute to Congress a purpose to pre-empt the state regulation contained in § 8. The decision in *Hill v. Florida*, 325 U.S. 538, in no wise obstructs this conclusion. An element most persuasive here, congressional approval of the heart of the state legislative program explicitly brought to its attention, was not present in that case. Nor was it true of *Hill v. Florida*, as it is here, *that the challenged state legislation was part of a program, fully canvassed by Congress through its own investigations*, to vindicate a legitimate and compelling state interest, namely, the interest in combating local crime infesting a particular industry. [363 U.S. at 154-55 (emphasis added).]

Justice Brennan joined the plurality opinion only in its judgment that the decision of the court below be affirmed. Justice Brennan based his decision to join the plurality in its judgment on the fact that Congress had demonstrated its intent that the state legislation should stand despite the provisions of the NLRA. 363 U.S. at 160. Accordingly, *DeVeau* stands as a narrow exception to *Hill* v. *Florida*.

The Appellants and Amici Curiae Atlantic City Hotel Association and Playboy Hotel Casino essentially advance the argument that the labor law preemption doctrine, as developed in *Hill* and *Garmon*, should not apply because the Casino Control Act is a general, comprehensive statute designed to regulate the casino industry and not labor unions or labor-management relations in the industry. In *Lockridge*, 403 U.S. at 292, this Court rejected the argument advanced by the Appellants and Amici Curiae. Moreover, the Court refused to create a "general v. particular" exception to the labor law preemption doctrine. Justice Harlan stated for the Court:

> Pre-emption . . . is designed to shield the system from conflicting regulation of conduct. It is the conduct being regulated, not the formal description of governing legal standards, that is the proper

> focus of concern. Indeed, the notion that a relevant distinction exists for such purposes between particularized and generalized labor law was explicitly rejected in *Garmon* itself. [403 U.S. at 292 (citation omitted).]

Lockridge established that the critical concern is the type of "conduct being regulated" and not the formal description of the regulation in issue. The Casino Control Act limits the employees' choice of a collective bargaining representative, and therefore regulates conduct clearly protected by § 7 of the NLRA. In light of this Court's decision in *Lockridge*, the Casino Control Act's regulation of conduct protected by the NLRA brings the New Jersey statute within the rigid strictures of the federal labor law premption doctrine.

II. THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) PREEMPTS ALL STATE LEGISLATION RELATING TO EMPLOYEE BENEFIT PLANS

The Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, *et seq.*, established a comprehensive legislative scheme for regulating employee benefit plans. The Act specifically addresses the preemption issue and establishes pension plan regulation as a matter of exclusive federal concern. *See Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981). Thus, § 514(a) of ERISA provides:

> [The] provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. [29 U.S.C. § 1144(a)]

In *Alessi*, 451 U.S. 504, this Court, in a unanimous decision,[2] established the broad preemptive scope of § 514

[2] Justice Marshall wrote the opinion for the eight participating members of the Court. Justice Brennan did not participate.

of ERISA. This Court stated: "[t]his provision demonstrates that Congress intended to depart from its previous legislation that 'envisioned the exercise of state regulation power over pension funds,' *Malone* v. *White Motor Corp.* (plurality opinion), and meant to establish pension plan regulation as exclusively a federal concern." 451 U.S. at 523 (footnote and citation omitted).

Section 93(b) of the Casino Control Act is a state law which is preempted by § 514 of ERISA. Section 93(b) provides in relevant part:

> No labor organization . . . may administer any pension or welfare funds, if any officer . . . is disqualified in accordance with the criteria contained in section 86 of [the] act. [N.J. Stat. Ann. 5:12-93(b) (West Supp. 1983-1984).]

Section 93(b) is designed to regulate the administration of pension and health and welfare funds. The plain language of this provision indicates that it "relate[s] to any employee benefit plan" within the meaning of § 514 (a) of ERISA. 29 U.S.C. § 1144(a).

Moreover, ERISA makes clear that even indirect state regulation impacting on private pensions may encroach on this area of exclusive federal concern. *Alessi*, 451 U.S. at 525. Section 514(c)(2) of ERISA defines state to include "a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." 29 U.S.C. 1144(c)(2); *Alessi*, 451 U.S. at 525. Congress "clearly meant to preclude the States from avoiding through form the substance of the preemption provision." *Alessi*, 451 U.S. at 525.

In light of the clear preemptive intent of § 514 of ERISA and this Court's broad construction of this provision in *Alessi*, § 93(b) of the Casino Control Act is federally preempted by ERISA.

III. THE IMPOSITION OF ADDITIONAL PENALTIES FOR THE COMMISSION OF CRIMES ALREADY PROHIBITED BY EXISTING FEDERAL AND STATE LEGISLATION IS UNNECESSARY

In the present case, § 93 of the Casino Control Act establishes disqualification criteria for collective bargaining representatives. This statute regulates conduct clearly protected by § 7 of the NLRA, a matter of exclusive federal concern. Therefore, this regulation is preempted by the NLRA. The illegality of this specific state provision, of course, does not mean that the states cannot legislate against labor racketeering within the existing, balanced relationship between federal and state legislation. Indeed, comprehensive schemes of federal and state legislation directed to the very concerns of § 93 of the Casino Control Act already exist.

A. Federal Labor Legislation

Congress has provided the federal government with the statutory authority to address the issue of labor racketeering through labor and criminal legislation. Labor-management corruption is expressly dealt with in the LMRA. Section 302 of the Act prohibits employers from paying and labor organizations or their officers from receiving money or other things of value. This prohibition is enforceable by criminal and civil penalties. 29 U.S.C. § 186.

The LMRDA was enacted in 1959 to establish a comprehensive scheme for the protection of membership rights in unions. The Act contains a Bill of Rights of Members of Labor Unions, 29 U.S.C. § 411; comprehensive reporting requirements, 29 U.S.C. §§ 431-41; regulation of the imposition of trusteeships over subordinate labor organizations, 29 U.S.C. §§ 461-66; the establishment of election procedures, 29 U.S.C. §§ 481-83; and protections in the form of fiduciary standards and responsibilities for officers, 29 U.S.C. §§ 501-04. *See United States* v. *Local 560, etc., et al.*, 550 F. Supp. 511, 516 (D. N.J. 1982).

Section 504 of the Act establishes disqualification criteria for responsible union positions and provides criminal penalties for violating the section. Any person who holds an office or position in violation of 504 is subject to criminal prosecution. Moreover, criminal sanctions may be imposed on any labor organization or officer who knowingly permits any person to assume or hold a position in violation of § 504(a). 29 U.S.C. §§ 504(a)-504(b).

The LMRDA contains several criminal prohibitions in addition to § 504. Section 501(c) prohibits any person from converting, stealing, or embezzling union assets. 29 U.S.C. § 501(c). Section 502 subjects union officers and employees to criminal penalties for violating the bonding requirements for a person in a position of trust with the responsibility of handling union assets. 29 U.S.C. § 502. Section 503(a) prohibits labor organizations from lending officers or employees over $2,000.00. 29 U.S.C. § 503(a). Section 503(b) prohibits labor organizations and employees from paying the fine of any officer or employee convicted of a willful violation of the Act. 29 U.S.C. § 503(b). *See* Cox, *Internal Affairs of Labor Unions Under The Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 824 (1960). Finally, extortionate picketing is outlawed by § 602. 29 U.S.C. § 522.

ERISA complements the LMRDA by providing protection against corruption in the administration of employee benefit plans. Section 411(a) provides that no person who has been convicted of, or who has been imprisoned as a result of his conviction of, a list of designated federal or state offenses, may serve as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or custodian to any employee benefit plan. 29 U.S.C. § 1111(a). This provision provides for a five year disqualification period, unless certain exceptions are satisfied. 29 U.S.C. § 1111(a). In addition to disqualifying persons from holding office or employment,

§ 411(a) prohibits any person from knowingly permitting any person from serving in a capacity in violation of § 411(a). Section 411(b) provides criminal penalties for any person who intentionally violates Section 411. 29 U.S.C. § 1111(b).

In drafting the disqualification provisions, Congress recognized the relationship between ERISA and the established federal legislative scheme governing labor relations. A review of § 504 of the LMRDA and § 411 of ERISA reveals that the two provisions were intended to be virtually identical. Moreover, § 411(a) includes a violation of § 302 of the LMRA and any violation of the LMRDA among the disqualifying offenses.

B. Federal Criminal Legislation

In addition to the federal labor laws, the federal government has utilized the Hobbs Act, 18 U.S.C. § 1951, *et seq.*, and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.*, to attack corruption in the context of labor related activities.

The Hobbs Act forbids interference with commerce by extortion. The Act defines extortion to mean the obtaining of property from another, with his consent, induced by the wrongful use of actual or threatened force, violence or fear. . . ." 18 U.S.C. § 1951(b)(2). This Court and various courts of appeal have held that the Hobbs Act prohibits union officials from threatening force or violence against an employee in order to obtain personal payoffs,[3] as well as prohibiting unions from using the proscribed means to exact wage payments from employers in return

---

[3] *See, e.g., United States* v. *Iozzi*, 420 F.2d 512 (4th Cir. 1970), *cert. denied*, 402 U.S. 943 (1971); *United States* v. *Kramer*, 355 F.2d 891 (7th Cir.), *cert. granted in part and denied in part*, 384 U.S. 100 (1966); *Bianchi* v. *United States*, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955), *cited in United States* v. *Enmons*, 410 U.S. 396, 400 n.4 (1973).

for imposed and superfluous services of workers.[4] *United States* v. *Enmons*, 410 U.S. 396, 400 (1973).

RICO was designed as a forceful weapon against organized crime's influence over legitimate interstate business. Project, *White Collar Crime: Second Annual Survey of Law*, 19 Am. Crim. L. Rev. 1973, 351 (1981). Congress intended that RICO provide a safeguard against organized crime's influence in organized labor. Senate Report No. 91-617 states:

> Closely paralleling its takeover of legitimate business, organized crime has moved into legitimate unions. (footnote omitted) Control of labor supply through control of unions can prevent the unionization of some industries or can guarantee sweetheart contracts in others. It provides the opportunity for theft from union funds, extortion through the threat of economic pressure, and the profit to be gained from the manipulation of welfare and pension funds and insurance contracts. Trucking, construction, and waterfront entrepreneurs have been persuaded for labor peace to countenance gambling, loan sharking and pilferage. As the takeover of organized crime cannot be tolerated in legitimate business, so, too, it cannot be tolerated here. [S. Rep. No. 91-617, 91st Cong., 1st Sess. 78 (1968), *cited in Local 560*, 550 F. Supp. at 524.]

RICO prohibits a person from using income obtained through a pattern of racketeering activity to acquire an interest in an enterprise, 18 U.S.C. § 1962(a), acquiring or maintaining an interest in an enterprise through a pattern of racketeering activity, 18 U.S.C. § 1962(b), conducting or participating in the affairs of an enterprise through a pattern of racketeering activity, 18 U.S.C. 1962(c), and conspiring to commit any of the above offenses, 18 U.S.C. § 1962(d). Project, 19 Am. Crim. L. Rev. at 353-354. RICO provides for criminal and civil

---

[4] *See, e.g., United States* v. *Green*, 350 U.S. 415, 417 (1956); *United States* v. *Kemble*, 198 F.2d 889 (3d Cir.), *cert. denied*, 344 U.S. 893 (1952), *cited in United States* v. *Enmons*, *supra*, 410 U.S. at 400 n.5.

remedies. The federal government has applied the Act to labor officials in the criminal [5] and civil [6] context.

C. State Legislation

Racketeering may be prosecuted by the states through enforcement of their general criminal laws. Indeed, the LMRDA recognizes the states' traditional role in criminal law enforcement. Section 604 of the Act preserves the states' authority to enforce their general criminal laws against designated offenses. 29 U.S.C. § 524. Secondly, the States may exercise their traditional police powers to enact legislation to serve their specific purposes.

D. Conclusion

The instant case illustrates one limitation on the exercise by the states of their police powers. State legislation may not infringe on the federally protected right of employees to select the bargaining representatives of their choice. This right is protected by § 7 of the NLRA and is a matter of exclusive federal concern. Accordingly, this interest may only be modified or regulated through congressional action. This was recognized in *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1 (1957), in which the Court stated:

> Congress kn[ows] full well that its labor legislation 'preempts the field that the [LMRA] covers insofar as commerce within the meaning of the Act is concerned' and demonstrated its ability to spell out

---

[5] *See, e.g., United States* v. *Thordarson*, 646 F.2d 1323 (9th Cir.) (use of explosives and arson in labor extortion scheme), *cert. denied*, 454 U.S. 1055 (1981); *United States* v. *Scotto*, 641 F.2d 47, 50-51 (2d Cir. 1980) (union president in kickback scheme), *cert. denied*, 452 U.S. 961 (1981); *United States* v. *Provenzano*, 620 F.2d 985, 989 (3d Cir.) (complex kickback scheme to ensure "labor peace"), *cert. denied*, 449 U.S. 899 (1980); *United States* v. *Kaye*, 556 F.2d 855, 859 (5th Cir.) (pay fraud by union steward), *cert. denied*, 434 U.S. 921 (1977), *cited at Project*, 19 Am. Crim. L. Rev. at 353 n.1411.

[6] *United States* v. *Local 560*, 550 F. Supp. 511.

with particularity those areas in which it desired state regulation to be operative. [353 U.S. at 9-10, *quoting Amalgamated Assn. of Street Electric Railway & Motor Coach Employees of America* v. *Wisconsin Employment Relations Board*, 340 U.S. at 397-98.]

In the present case, § 93 of the Casino Control Act regulates the rights of employees under § 7 of the NLRA, an area of exclusive federal concern. Section 7 is the cornerstone of the national labor policy because it is the central source from which all employees' rights to organize and engage in concerted activity are derived. Congress, through federal labor legislation, expressly intended to occupy this critical area to the exclusion of the states. The NLRA and LMRA, passed by Congress pursuant to its authority under the commerce clause, constitute the supreme law of the land under Article VI of the constitution. *Amalgamated, supra*, 340 U.S. at 399. Because the New Jersey legislation at issue conflicts with Congress' will, as plainly expressed in federal labor legislation, it is preempted and therefore violative of the supremacy clause of the Constitution. U.S. CONST. art VI, cl.2.

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted,

DAVID PREVIANT
ROBERT M. BAPTISTE
Counsel of Record
STEVEN L. MURRAY
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
Area Code (202) 624-6945
Attorneys for the International Brotherhood of Teamsters, Amicus Curiae

Dated: February 21, 1984